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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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35070	7590	10/24/2005		
ANATOLY S. WEISER, ESQ 674 VIA DE LA VALLE SUITE 216 SOLANA BEACH, CA 92075			EXAMINER FADOK, MARK A	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/619,255	Applicant(s) LIN-HENDEL, CATHERINE	
	Examiner Mark Fadok	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-22 is/are pending in the application.
- 4a) Of the above claim(s) 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The examiner is in receipt of applicant's response to office action mailed 3/22/2005, which was received 7/26/2005. Acknowledgement is made to the amendment to claims 1,5, and 21 and the addition of claim 22, leaving claims 1-10,12-22 as pending in the instant application. The applicant's response has been carefully considered, but was not found to be persuasive, therefore the previous rejection is restated below:

Election By Original Presentation

Newly submitted claim 22 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: there is no antecedent basis for the retrieved data.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 22 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant.

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Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

USC 112 Sixth Paragraph Notification

Applicant has provided means-plus function language in the instant claims, which could be construed as having a narrower meaning emanating from specific embodiments found in the specification. Since it is the applicant's responsibility to invoke USC 112 6th paragraph, the examiner will treat the claims using the broadest reasonable interpretation unless the applicant responds to the office action invoking USC 112 6th paragraph and identifying the exact limitations that the applicant is reading into the claims from the specification. Please be advised that should the applicant invoke USC 112 6th paragraph in response to this office action the response may still be made final using the rationale that the applicant has added new subject matter to the claims. A lack of response to this notice will be construed as prosecution history estoppel indicating that the applicant does not wish to invoke USC 112 6th paragraph.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,4,5,9,10,16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danish et al (6,412,012) in view of Official Notice.

In regards to claim 1,3,4,5,9,10,16, and 20, Danish discloses all the features of the instant claims. For example, Danish teaches a process for identifying a single item from a family of items presents a user with a feature screen having a series of groupings. Each grouping represents a feature having a set of alternatives from which to select. Selected alternatives are used as selection criteria in a search operation. Results of the search operation is a revised feature screen indicating alternatives that remain available to the user for further selection and searching. The feature screen and search process, therefore, presents the user with a guided nonhierarchical parametric search to identify matching items based upon user specified criteria and priorities. Also disclosed is an adaptation of the claimed method and system appropriate in an Internet environment (see abstract, and FIG's 1-35).

Claims 2,6-8,12-15,17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danish et al (6,327,588) in view of Official Notice and further in view of Weaver (6,404,426).

In regards to claims 2,6-8,12-15,17-19, Danish teaches all the features of the instant claims except as follows:

Danish teaches using artificial intelligence rules to match the merchandise with the accessories and producing a list of results (FIG 21-24), but does not specifically mention that the items presented have links to other databases for other types of merchandise. It was old and well known in the art at the time of the invention to include links to other products in a recommendation list. It would have been obvious to a person having ordinary skill in the art to include in Danish the links of the instant invention, because this provides a convenient means for gathering additional information on products that are listed without having to present all the information on one page, which could be overwhelming to the user.

Danish teaches purchasing merchandise and recommending compatible products, but does not specifically mention using a virtual avatar to display the articles that a user wishes to purchase. Weaver teaches a layout and schematics program for preparing and displaying a floor plan depicting merchandise selected by the user (FIG 7, analogous to mannequin trying on clothes).

wherein the dimensions and other architectural features of the floor plan are provided by the user (see summary and user controls);

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a models database having images of models (summary);

an animation and morphing program for providing image and motion creation and morphing to models selected from the model database by the user (FIG 7),

wherein the selected models wear merchandise selected by the user (col 2, lines 53-58),

the user able to alter the models and the models' features (summary);

a temporary working database in which the user works while using the system (col 4, lines 7-30). It would have been obvious to a person having ordinary skill in the art to include in Danish the virtual modeling capabilities as taught by Weaver, because this type of preview allows the user to become more comfortable with the purchased articles when the transaction is done online (col 1, lines 15-20).

and

The combination of Danish and Weaver teaches manipulating data in a database and also collecting preference data in a database for future retrieval, but does not specifically mention that the data is stored in a temporary working database or a personal folder. It was old and well known in the art at the time of the invention to use temporary databases to manipulate data and to store data that was manipulated in a personal folder. It would have been obvious to a person having ordinary skill in the art to include in the combination of Danish and Weaver the separate databases because this would allow many users to use the database and not overwhelm the storage capacity by storing many groups of data that may never again be accessed. This would also increase the efficiency of the system.

In regards to claim 6, Danish/Weaver teaches means for preparing and displaying, based on specifications provided by the user,

a recommended floor plan showing each item of merchandise selected by the user (Weaver, FIG 7, analogous to adjusted mannequin being dressed with selected clothing).

In regards to claim 12, Danish teaches wherein the the interactive wizard guide includes: means for selecting a model from a model database and morphing the model using specifications provided by the user (Weaver, FIG 7).

In regards to claim 13, Danish/Weaver teaches wherein the interactive wizard guide uses an animation graphics composition morphing program to cause the model to be animated and to engage in a full range of movement displayed on the display device (Weaver, FIG 7).

In regards to claim 14, Danish/Weaver wherein the interactive wizard guide includes both inclusion and exclusion mechanisms to assist the user in making preference selections (Weaver, FIG 7).

In regards to claim 17, Danish/Weaver wherein if the merchandize is clothing, the displaying means of the interactive wizard guide can display a plurality of ensembles of clothing for viewing by the user, each ensemble able to be altered with ensemble items moved from one ensemble to another, colors and patterns changed, and reassembled interactively, the ensembles able to be displayed using models and animation specified by the user (Weaver, FIG 9B).

In regards to claim 19, the combination of Danish and Weaver teach a list of items that can be selected for display on an avatar, but does not specifically mention that an additional desired matching items can be retrieved and displayed for viewing that may not be included in the list. It was old and well known in the art at the time of the invention to be able to retrieve additional items that may not be on a provided list (i.e. adding to a shopping cart). It would have been obvious to a person of ordinary skill in the art to include in Danish and Weaver the capability to get additional items, because the user may not be satisfied with the current selections and might want to try on something they had seen earlier thus increasing the likelihood of a sale through the system.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Danish et al (6,412,012) in view of Official Notice in view of Weaver and further in view of Hashimoto (5,729,699).

In regards to claim 21, the combination of Danish and Weaver does not specifically teach wherein the predetermined intelligence rules pertain to determining whether two colors match. Hashimoto teaches a display system, which evaluates and coordinates accessories and colors (see at least abstract). It would be obvious to a person of ordinary skill in the art to include in Danish and Weaver the coordinating suggestion as taught by Hashimoto, because this would provide an additional feature that users, perhaps color blind or lacking in taste, could use to assure that the clothing being bought matches.

Response to Arguments

In regards to claim 1:

Applicant argues that Danish does not teach or suggest means for receiving the user's preferences and answers to create a profile of the user. The examiner disagrees and notes that this newly added phrase ("create a user profile" from the 6/7/2004 amendment is not defined in the specification. Therefore the examiner considers the phrase to mean any information that is saved (even temporarily) from a users session. Danish clearly teaches saving information from the user during the session to affect a more accurate search.

Applicant argues that Danish does not teach or suggest means for searching in the retrieved data from the database using predetermined intelligence rules together with the profile to determine the recommendations. The examiner disagrees and directs the applicant to (col 3, lines 50-65), assisted user searching.

In regards to claim 4, applicant argues that Danish does not disclose means for providing the user with names of a plurality of vendors for the merchandise recommended to the user. The examiner disagrees and notes that FIG 26 shows an example means for supplying a name, which could be any name, therefore there are means for providing a plurality of names. Further it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

In regards to claim 9, applicant argues that Danish does not teach that the data is stored in a local database. The examiner disagrees, Danish teaches a web browser that is used on the client (col 18, lines 40-60), in addition Microsoft Dictionary dated 1999, defines a web browser as having a local hard drive available along with the means/capability to download programs, therefore, Danish has the means to download the data to the local drive from the server.

In response to applicant's argument that Danish is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if

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not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention.

See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Danish is in the field of e-commerce and the functionality teaching are useful regardless of the product sold.

In regards to claim 2, applicant argues that including links to a database for other types of merchandise in a list of recommendations was not well known in the art. In response to this the examiner offers Kraemer as an example of the prior art (see col 5, lines 25-40).

In regards to claim 19, applicant argues that a shopping carts list is not analogous to applicant's array of recommendations. The examiner uses the shopping cart to indicate that a list can be updated by selecting additional products to be added. Additionally, the examiner directs the applicant's attention to the claim 8 where Danish clearly teaches means for adding additional items to a provided array.

In regards to claim 21, applicant argues that the combination does not explain why the system would allow the user to override the rule. The examiner does not understand applicant's argument since there is no mention of overriding the rule in claim 21. Applicant does not argue that Danish has the means for overriding a rule in claim

20, therefore the question of why the system would allow the user to over ride the rule is moot.

Applicant argues that the listing of official notice taken by the examiner The examiner disagrees and notes that providing a listing of the official notice taken by the examiner does not constitute a traverse and therefore the object of the well-known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). (see below)

A "traverse" is a denial of an opposing party's allegations of fact. The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of

what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well-known statement during examination, then the object of the well-known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-**

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6755. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(571) 273-8300 [Official communications; including

After Final communications labeled

"Box AF"]

(571) 273-6755 [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]



Mark Fadok

Primary Examiner